

# The unreformed House of Lords is already the largest parliamentary chamber of any democracy

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By Democratic Audit UK

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*The appointment of 30 new peers to our unreformed House of Lords was announced this week. In the [2012 audit](#) of UK democracy, **Stuart Wilks-Heeg**, **Andrew Blick**, and **Stephen Crone** discussed the composition and role of the upper chamber. They highlighted how the UK is almost unique among established democracies in possessing a parliamentary chamber that is mainly unelected, and set out particular concerns about the lack of accountability of government ministers sitting in the Lords.*



The House of Lords: new peers but no reform. Credit: Catherine Bebbington (Parliamentary Copyright)

## Role of elections in determining access to office

The 2012 audit sets out concerns about the roles played by unelected individuals in governmental and legislative office, all of which centre on the role of the House of Lords.

### ***The House of Lords, as the second chamber in Parliament, remains wholly unelected***

As of 1 April 2011, there were 792 members of the House of Lords, 678 of whom were appointed as life peers (86 per cent), 89 hereditary peers (11 per cent) and 25 Bishops (three per cent). It is not uncommon for parliamentary chambers to contain appointees, particularly in bicameral legislatures. Indeed, 54 (28 per cent) of the 188 countries listed in the Inter-Parliamentary Union's (IPU) [Parline database](#) (2011) have at least some appointed members in their national parliament. Among the 77 countries with a bicameral legislature, 38 (49 per cent) have some role for appointed parliamentarians. However, the House of Lords is highly unusual by international standards for two main reasons.

First, the House of Lords is the largest parliamentary chamber in any democracy. It is surpassed in size only by China's National People's Congress (2987 members), and membership of the Lords is growing steadily. Not only has membership of the Lords increased from 662 members in 1999 to 792 in 2011, but it is potentially [set to reach 1062](#) as a result of the coalition's commitment to achieve proportionality in line with the 2010 general election outcome.

Second, the House of Lords is one of a small number of parliamentary chambers globally to include no directly- or indirectly-elected members whatsoever. Just 22 (12 per cent) of the countries in the IPU's Parline database have parliamentary chambers in which elections play no role at all. 10 of these countries are not classified as electoral democracies by Freedom House, while the remaining 12 are all Commonwealth countries in which the Westminster model of democracy remains dominant. Only two of the 22 countries in which appointees make up half or more of the membership of at least one parliamentary chamber – the UK and Canada – are OECD countries with established democratic systems of government. Otherwise, by continuing to allow a significant role for unelected parliamentarians, the UK finds itself in the company of states such as Belize, Lesotho, Madagascar, Oman, Russia and Saudi Arabia.

***A significant minority of government ministers are drawn from the House of Lords and are, therefore, not only unelected but also unaccountable to MPs***

Although the great majority of ministers are drawn from the ranks of elected MPs, there has been a growing tendency for cabinets to include peers appointed as secretaries of state. Aside from the Macmillan government of 1957-63 and the Heath government of 1970-74, post-war Cabinets did not include members of the Lords, other than in the two roles specifically reserved for peers – the Leader of the Lords and the Lord Chancellor. While all of Margaret Thatcher's Cabinets from May 1979 – July 1989 included at least one additional peer, the practice of appointing members of the Lords to Cabinet roles then appeared to die out. Between the replacement of Lord Young as Trade and Industry Secretary in July 1989 and the appointment of Baroness Amos as International Development secretary in May 2003, no such appointments were made.

However, while the requirement for the Lord Chancellor to be drawn from the Lords was removed by the Constitutional Reform Act 2005, virtually all recent Cabinets have included at least one peer in addition to the Leader of the Lords. During Gordon Brown's tenure as Prime Minister concerns were raised that a number of individuals were appointed to the Lords with the specific purpose of simultaneously appointing them as ministers. The Public Administration Select Committee (2010) highlighted its concerns about this growing tendency to use the Lords to make outside appointments into government. The Committee pointed out that, while such appointments were not new, the incidence of them seemed to be growing. The House of Commons Library (Maer, 2010) found that at least 10 such appointments appeared to be made under Gordon Brown from June 2007 to May 2010. These appointments included that of Lord Adonis as Secretary of State for Transport and Lord Mandelson as Secretary of State for Business, Innovation and Skills (with responsibility for a wide-ranging portfolio and a total budget of over £37 billion per annum). It was with reference to these developments, that the newly-elected speaker of the House of Commons, John Bercow, [expressed the following concerns](#) in a Hansard Society lecture in September 2009:

*I find the fact that backbenchers have no means of directly questioning prominent Ministers of the Crown because they happen to sit in the House of Lords to be less than satisfactory. That is even more true at a time when the Cabinet contains the esteemed Lord Mandelson, whose empire is of a scale not seen since the death of Alexander the Great, and the thoughtful Lord Adonis who presides over the country's transportation network.*

## **The House of Lords and legislative oversight**

In a bicameral system such as that of the UK parliament, it might be appropriate to expect the upper chamber to act

as a check upon legislative proposals emerging from the government-dominated Commons. This function could be seen as particularly valuable given the growing quantity of laws being produced. But the role of the House of Lords in the legislative processes of parliament is restricted by the principle of House of Commons primacy. The justification usually offered for this subordination of the Lords is its unelected nature. While it is certainly the case that there are democratic problems with the Lords, reform in this area, which would legitimise a more active role for the second chamber, has been exceptionally slow to come about; and one of the blocks on such a change has been the reluctance of the Commons to create a chamber with a rival democratic mandate to its own.

Commons primacy is underpinned both by legislation and convention. Under the Parliament Acts 1911 and 1949 the most important types of legislation over which the Lords possesses an absolute veto are any bill first introduced to parliament in the Lords; any bill extending the duration of parliament beyond the present maximum of five years; and any secondary legislation. Any other public non-money bill passed by the Commons in two successive sessions will, if rejected by the Lords on both occasions, be sent for Royal Assent anyway. In practice the Lords can delay legislation of this sort for not less than thirteen months after it first receives a second reading in the Commons.

The Parliament Acts have been used to force through legislation without the consent of the Lords on seven occasions, by Liberal, Labour and Conservative governments. The most recent such use occurred during the current audit period, for the [Hunting Act 2004](#). There followed a legal challenge to this act, on a basis that the Parliament Act 1949 was invalid, because it both amended the Parliament Act 1911 and was passed into law against the wishes of the Lords using the 1911 Act. In the challenge to the Hunting Act 2004 it was argued that the Parliament Act 1911 was not intended to be used to amend itself, and that therefore the Parliament Act 1949, and by extension the Hunting Act 2004 which was passed using the 1949 Act, were invalid. While this particular challenge failed, comments made by some Law Lords when giving their judgements in the case suggested that there might be limits to the uses to which the Parliament Acts could be put in forcing through legislation. For instance, a court might hold that the acts could not be used to remove the ability of the Lords to veto extensions to the life of a parliament. The removal of this veto ability would then leave the way open for the Commons to use the Parliament Acts to extend the life of a parliament: clearly contrary to the purpose of Parliament in passing the 1911 Act. It seems appropriate that, in the absence of a written UK constitution setting out the fundamental democratic rules, the judiciary should be prepared to resist such potential flagrant abuses of the Parliament Acts by a government using its Commons majority.

As well as legislation, the House of Lords is restrained by constitutional convention in its ability to resist the will of the Commons. The so-called '[Salisbury-Addison doctrine](#)', dating to 1945, requires the Lords not to obstruct legislation enacting pledges included in the general election manifesto of the governing party. The existence since 2010 of a coalition government with no single manifesto to draw upon has cast doubt upon the continued relevance of Salisbury-Addison. There are, however, claims (often made in particular by the governing party or parties of the day) that there exists some kind of principle that the Lords should be reluctant to resist any government legislation. There also appears to be a convention that the Lords will be sparing in its use of its ability to veto secondary legislation. This veto power has been used on only three occasions, and in each case the Lords backed down when asked to pass the secondary legislation again.

Yet while it is subject to Commons primacy, the Lords has been portrayed as playing an increasingly constructive and valuable role in the legislative process. A [Constitution Unit report](#) analysing the work of the Lords during 2006 found that the government was defeated there 52 times; and substantial concessions were made by the government to the Lords. It noted that the Lords was able to work in conjunction with the Commons to bring about alterations to legislation. Areas of success identified included the Identity Cards Bill, the Police and Justice Bill and the Racial and Religious Hatred Bill. In such cases, a perverse phenomenon has developed: the Lords is being relied upon to resist legislation which might undermine democratic principles, yet in so doing it could be seen as an unelected chamber seeking to frustrate the will of an elected one.

***Stuart Wilks-Heeg, Andrew Blick, and Stephen Crone are the authors of the 2012 Democratic Audit report.***

*For further analysis see the 2012 audit sections 2.1 [Free and Fair Elections](#) and 2.4 [The Democratic Effectiveness of Parliament](#). Parliamentary copyright images are reproduced with the permission of Parliament.*